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Intellectual Property Causes
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IPW

Attorney Docket No. P24281

In re application of: Wolfgang MEYER-INGOLD et al.

Application No. : 10/681,204

Mail Stop Amendment
Group Art Unit: 1616

Filed : October 9, 2003

Examiner: Stitzel, David Paul

For : POLYMERIC COMPOSITE FOR USE IN WOUND MANAGEMENT

Mail Stop Amendment

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

Transmitted herewith is an **Election with Traverse** in the above-captioned application.

☐ Small Entity Status of this application under 37 C.F.R. 1.9 and 1.27 has been established by a previously filed statement.

☐ A verified statement to establish small entity status under 37 C.F.R. 1.9 and 1.27 is enclosed.

☐ A Request for Extension of Time.

☒ No additional fee is required.

The fee has been calculated as shown below:

Claims After Amendment	No. Claims Previously Paid For	Present Extra	Small Entity		Other Than A Small Entity	
			Rate	Fee	Rate	Fee
Total Claims: 103	103	0	x 9=	\$	x 18=	\$0.00
Indep. Claims: 5	5	0	x 44=	\$	x 88=	\$0.00
Multiple Dependent Claims Presented			+150=	\$	+300=	\$0.00
Extension Fees for ____ Month(s)				\$		\$0.00
Total:				\$	Total:	\$0.00

* If less than 20, write 20

** If less than 3, write 3

☐ Please charge my Deposit Account No. 19-0089 in the amount of \$_____.

☐ A check in the amount of \$_____ to cover the filing/extension fee is included.

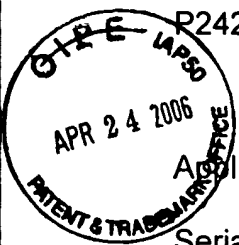
☒ The U.S. Patent and Trademark Office is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 19-0089.

☒ Any additional filing fees required under 37 C.F.R. 1.16.

☒ Any patent application processing fees under 37 C.F.R. 1.17, including any required extension of time fees in any concurrent or future reply requiring a petition for extension of time for its timely submission (37 C.F.R. 1.136(a)(3)).


Neil F. Greenblum
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R24281.A08

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Wolfgang MEYER-INGOLD et al.

Confirmation No. 6007

Group Art Unit: 1616

Serial No. : 10/681,204

Examiner: Stitzel, David Paul

Filed : October 9, 2003

For : POLYMERIC COMPOSITE FOR USE IN WOUND MANAGEMENT

ELECTION WITH TRAVERSE

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Amendment
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

This is in response to the requirement for restriction under 35 U.S.C. § 121 mailed from the U.S. Patent and Trademark Office on March 24, 2006. Inasmuch as the one-month shortened statutory period is originally set in the Office Action to expire on April 24, 2006, this response is being filed by the initial due date for response and no extension of time is believed to be necessary. However, if any extension of time is deemed necessary, this is an express request for any necessary extension of time and authorization to charge any necessary extension of time fee or any other fees which may be required to preserve the pendency of the present application to Deposit Account No. 19-0089.

RESTRICTION REQUIREMENT

The Examiner has required restriction to one of the following inventions:

- I. Claims 1-39, 45, 55-65, 67-86 and 99-103, drawn to an antimicrobial composite, classified in class 424, subclass 409.
- II. Claims 44-46, 66 and 87-90, drawn to a wound management article, classified in class 424, subclass 443.
- III. Claims 46-49 and 91-94, drawn to a method of covering a wound, classified in class 424, subclass 78.06.
- IV. Claims 50-54 and 95-98, drawn to a process for producing an antimicrobial polymeric composite, classified in class 424, subclass 485.

ELECTION OF SPECIES REQUIREMENT

Further, the Examiner requests that elections from the following species be made,

i.e.,

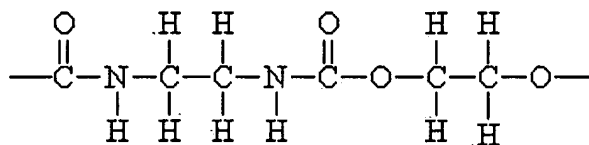
- A: 1. a polyacrylate; 2. a styrene butadiene block copolymer; 3. a natural rubber; 4. a synthetic rubber (i.e., polyurethane); 5. a polysaccharide (i.e., cellulose or starch); 6. a heterosaccharide (i.e., pectin); and 7. a protein (i.e., casein).
- B: 1. Ag; 2. Ag₂O; 3. Al; 4. Au; 5. Bi; 6. Cu; 7. CuO; 8. Ir; 9. Mg; 10. Pd; 11. Pt; 12. Sn; 13 Zn; and 14. ZnO.

The Examiner further requests that a single disclosed species of a specific glass composition be elected, i.e., a glass composition comprising about 40-60 mole % P_2O_5 , about 35-55 mole % of CaO, up to about 5 mole % Na_2O ; and about 5-20 mole % SiO_2 .

ELECTION

In order to be responsive to the requirement for restriction, Applicants elect, with traverse the invention set forth in **claims 1-39, 45, 55-65, 67-86 and 99-103** (Invention I as identified in the Restriction Requirement), **a polyurethane** as polymeric material, **silver (Ag)** as antimicrobial metal and a glass composition comprising about 40-60 mole % P_2O_5 , about 35-55 mole % of MgO (i.e., not CaO), up to about 5 mole % Na_2O ; and about 5-20 mole % SiO_2 .

As also requested in the present Office Action, the structure of a repeating unit of a non-limiting example of a polyurethane (i.e., a polyurethane wherein ethylene groups link the urethane functionalities) is as follows:



Polyurethane

TRAVERSE

Applicants respectfully submit that a restriction requirement is inappropriate in this case. Even if one were to assume, *arguendo*, that the inventions of Groups I to IV are distinct, the requirement for restriction should be withdrawn, because there is no serious burden.

In MPEP Chapter 800, the Office sets forth its policy by which examiners are guided in requiring restriction under 35 U.S.C. § 121. Section 803 states that “[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.”

Applicants note that all of the four inventions identified in the Restriction Requirement relate to antimicrobial composites, specifically, an antimicrobial polymeric composite, a wound management article comprising the antimicrobial polymeric composite, the use of the antimicrobial polymeric composite to cover a wound, and a process of making the antimicrobial polymeric composite. Accordingly, as a practical matter, the searches for inventions I to IV should significantly overlap. For example, a search for invention I should cover many areas (if not be coextensive therewith) that are also relevant for inventions II, III and IV. Thus, the search burden would not be serious. For the above reasons alone, the Restriction Requirement should be withdrawn, which action is respectfully requested.

Further, the Restriction Requirement alleges that “the wound management article as claimed in Invention II has a function of treating a wound, whereas the antimicrobial

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polymeric composite claimed in Invention I may alternatively have a function of imparting antimicrobial properties to a plastic chopping board that is used for cutting raw meat.”

Applicants respectfully submit that the suggested use of the antimicrobial polymeric composite claimed in Invention I for imparting antimicrobial properties to a plastic chopping board that is used for cutting raw meat is merely speculative and unrealistic. One of ordinary skill in the art will understand that in order to exert an antimicrobial effect, the antimicrobial metal (ion) needs to be leached from the glass composition. In order to leach the antimicrobial metal therefrom, the glass composition and thus, the antimicrobial polymeric composite will generally have to be held in prolonged contact with a fluid (such as a wound fluid). Applicants are not aware that chopping boards that have come in contact with a material such as, e.g., raw meat are usually disinfected by leaving them in prolonged contact with any antimicrobial polymeric composite (in the presence of a fluid).

This is yet another reason why the Restriction Requirement with respect to Inventions I and II is unwarranted and should be withdrawn.

Still further, the Restriction Requirement alleges that “as opposed to using said antimicrobial polymeric composite composition for covering a wound as claimed in Invention III, said composition, as claimed in Invention I, may alternatively be used for covering a toilet seat, so as to impart protection from pathogenic bacteria.”

Applicants respectfully disagree with the Examiner in this regard as well. As set forth above, in order to exert its antimicrobial effect, the antimicrobial glass and thus, the antimicrobial polymeric composite will have to be held in contact with a fluid (such as a wound fluid) so as to allow the antimicrobial metal to be leached from the glass

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composition. Applicants do not see that a correspondingly wetted toilet seat would be acceptable to anyone.

This is yet another reason why the Restriction Requirement with respect to Inventions I and III is unwarranted and should be withdrawn.

The Examiner is reminded of the rejoinder practice set forth in MPEP § 821.04, i.e., if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend or otherwise include all of the limitations of the allowable product claim will be rejoined.

Applicants further note that upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim.

Should there be any questions, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
Wolfgang MEYER-INGOLD et al.



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April 24, 2006
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